

further notes that there is no express authority for the Division of Correction to hold an individual pending execution of the death sentence. The absence of such express authority gives rise to a number of issues, including: (1) whether the sheriff or the Division of Correction has legal custody of the individual after the individual is delivered to the Division of Correction; and (2) whether the Division of Correction has authority to hold an individual in custody after the expiration of a warrant of execution or during the stay of a warrant of execution. To address these issues, the Committee believes that subsection (a) of this section should be amended to require that a court, after sentencing an individual to death, commit the individual to the custody of the Commissioner of Correction pending execution of the death sentence. See, e.g., § 9-103(a) of this article (which provides that, in noncapital cases, individuals are sentenced to the jurisdiction of the Division of Correction and committed to the custody of the Commissioner of Correction). The Committee also believes that subsection (b) of this section, which establishes duties of the sheriff while an individual is in custody of the sheriff, should be repealed as obsolete.

Also in subsection (a) of this section, the former reference to the "city" in which an individual is indicted is deleted as unnecessary because the defined term "county" includes Baltimore City. See § 1-101 of this article for the definition of "county".

In subsection (b) of this section, the references to the defined term "inmate" are substituted for the former references to a "felon" and "convict" for consistency throughout this article. See § 1-101 of this article for the definition of "inmate".

In subsection (b)(1)(ii) of this section, the reference to an inmate who is "in the custody of the Division" is substituted for the former reference to "said felon ... in the penitentiary" for consistency with § 9-103(a)(3) of this article, which provides that any reference to the confinement of an inmate in a particular State correctional facility must be construed to mean confinement in the Division of Correction.

The Correctional Services Article Review Committee notes, for consideration by the General Assembly, that the meaning of subsection (b)(2) of this section is unclear. The part of former Art. 27, § 74 that is revised in subsection (b)(2) of this section required a sheriff to keep an inmate in solitary confinement "as hereinafter provided when said felon is in the penitentiary". However, there were no provisions in the Death Penalty subheading of former Art. 27 (i.e., §§ 71 through 79) that required an inmate to be kept in solitary confinement while in the penitentiary. Therefore, subsection (b)(2) of this section does not appear to impose any duty on the sheriff. If the General Assembly does not repeal subsection (b) of this section for the reasons discussed above in this Revisor's Note, the General Assembly may wish to repeal subsection (b)(2) of this section as meaningless.

In subsection (c) of this section, the reference to an inmate "under sentence